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In the Supreme Court of the United States

OCTOBER TERM, 1976

ADAMO WRECKING CO., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1–A11) is reported at 545 F.2d 1. The opinion of the district court (Pet. App. A12–A47) is not officially reported.

JURISDICTION

The judgment of the court of appeals was entered on November 1, 1976. Mr. Justice Stewart extended the time within which to file a petition for a writ of certiorari to December 31, 1976, and the petition was filed on that date. The petition was granted on April 4, 1977. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the special judicial review provisions of Section 307(b) of the Clean Air Act bar a defendant in a criminal enforcement action from challenging the statutory validity of the emission standard it is charged with violating.

STATUTES AND REGULATIONS INVOLVED

1. Section 307(b) of the Clean Air Act, as added, 84 Stat. 1708, 42 U.S.C. 1857h–5(b), provides in pertinent part:

> (1) A petition for review of action of the Administrator in promulgating * * * any emission standard under section 112, * * * may be filed only in the United States Court of Appeals for the District of Columbia. * * * Any such petition shall be filed within 30 days from the date of such promulgation or approval, or after such date if such petition is based solely on grounds arising after such 30th day.
>
> (2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement.

2. Other pertinent statutory provisions and regulations are set out at Pet. Br. 2–7.

STATEMENT

1. To carry out his duties under Section 112 of the Clean Air Act, as added, 84 Stat. 1685, 42 U.S.C. 1857c–7, to protect the public health from hazardous

air pollutants, the Administrator of the Environmental Protection Agency declared asbestos to be a "hazardous air pollutant" and promulgated emission standards regulating the emissions of asbestos caused by a broad range of activities. See 40 C.F.R. 61.20–61.24, 38 Fed. Reg. 8829–8830.

One portion of these regulations established an emission standard applicable to the demolition of buildings and structures containing boilers, pipes, or structural members insulated or fireproofed with friable asbestos material. In addition to specific prior notification requirements, this emission standard provided (40 C.F.R. 61.22(d) (1973)):

> (2) The following procedures shall be used to prevent emissions of particulate asbestos material to outside air:
>
> (i) Friable asbestos materials, used to insulate or fireproof any boiler, pipe, or load-supporting structural member, shall be wetted and removed from any building, structure, facility, or installation subject to this paragraph before wrecking of load-supporting structural members is commenced. The friable asbestos debris shall be wetted adequately to insure that such debris remains wet during all stages of demolition and related handling operations.

Although petitioner could have challenged the emission standard by filing a timely petition for review in the United States Court of Appeals for the District of Columbia Circuit, pursuant to Section 307(b) of

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the Act, petitioner did not seek judicial review. Indeed, the regulation effectively went unchallenged. A petition for review filed by Dore Wrecking Company, in which the National Association of Demolition Contractors intervened,[1] was dismissed as untimely. *Dore Wrecking Co.* v. *Fri,* C.A.D.C., No. 73–1686, decided August 1, 1973.

2. On December 18, 1973, the Regional Administrator for Region V of the Environmental Protection Agency issued an order under Section 113(a)(3) of the Act, 84 Stat. 1686, as amended, 42 U.S.C. (Supp. V) 1857c–8(a)(3), directing petitioner in all future demolitions of structures containing friable asbestos to comply with the regulation. Petitioner responded on December 26, 1973, that it would comply fully with the regulation.[2]

The Environmental Protection Agency later received information that petitioner had not complied with the regulation. An indictment returned on February 20, 1975, in the United States District Court for the Eastern District of Michigan charged (A. 3) that:

> On or about the 19th day of February, 1974, at 2612 Carter Street, also known as 8751 Linwood Street, in the City of Detroit, County of Wayne, within the Eastern District of Michigan, Adamo Wrecking Company, the defendant herein did knowingly cause the emission of asbestos from a four and one-half story commercial masonry building at the aforementioned location by failing to wet and remove firable [*sic*] asbestos material, used to insulate and fireproof a boiler in the basement of said building, before demolition of the load-supporting structural supports had begun; in violation of Title 42, United States Code, Section 1857c–7(c)(1)(B), and the rules and regulations promulgated thereto, 38 F.R. 8829 (April 6, 1973), 40 C.F.R. § 61.22(d)(2)(i).

[1] Petitioner is a member of the National Association of Demolition Contractors.

[2] Because the district court dismissed the indictment before trial, the compliance order and petitioner's response are not in the record. We have attached them as appendices A and B to this brief.

Petitioner moved to dismiss this count, arguing that the asbestos emission regulation it was charged with violating is invalid. The regulation directs that a certain procedure or "work practice" be followed in demolition of structures containing friable asbestos; petitioner maintained that the Administrator lacked the authority to issue a "work practice" rule and was required by Section 112 of the Clean Air Act to establish numerical maximum permissible asbestos release limits (Pet. App. A13).

The prosecutor both defended the validity of the regulation and asserted that Section 307(b)(2) of the Act precluded petitioner from raising the challenge to the regulation. The prosecutor contended that review of the regulation could have been had exclusively in the United States Court of Appeals for the District of Columbia Circuit on a petition for review filed either within 30 days of the promulgation of the regu-

lation or in that court thereafter if the petition were based solely on grounds arising after expiration of the 30-day period (Pet. App. A14).

During oral argument in the district court, petitioner conceded that it could have sought review of the regulation's validity in the District of Columbia Circuit, as Section 307(b)(1) provides.[3] The district court nevertheless considered petitioner's challenge to the regulation and dismissed the indictment (Pet. App. A12–A47). The district court characterized Section 307(b) as "highly ambiguous" and chose "to resolve doubts in favor of jurisdiction" (Pet. App. A33). The district court then held that the emissions control regulation was defective because Section 112 required the Administrator to set numerical limits rather than to prescribe procedures for curtailing emissions (Pet. App. A34–A44).[4]

The court of appeals reversed. The court discerned nothing vague or ambiguous in Section 307(b). The legislative history of Section 307(b) demonstrated that review had been placed exclusively in the District of Columbia Circuit to ensure "even and consistent national application" of the standards, and that the 30-day time limit for seeking review was de-

[3] See Court of Appeals App. 85.

[4] The district court did not dismiss Count II of the indictment, which charged petitioner with making false statements in certain required reports (Pet. App. A35 n. 31, A44–A47). Proceedings on Count II have been held in abeyance pending final resolution of petitioner's challenge to Count I.

signed "to maintain the integrity of the time sequences provided throughout the Act" (Pet. App. A10). The court pointed out that petitioner could have challenged the emission standard through the Section 307(b) procedure had it chosen to do so (*ibid.*). Therefore, the court concluded, petitioner could not challenge the standard in this criminal case.[5]

SUMMARY OF ARGUMENT

I

Section 307(b)(1) of the Clean Air Act provides that judicial review of national hazardous air pollutant emission standards may be sought in the District of Columbia Circuit by filing a petition within 30 days of the promulgation of such a standard. Section 307(b)(2) provides that "[a]ction of the Administrator with respect to which review *could have been* obtained under paragraph (1) shall not be subject to judicial review in civil *or criminal* proceedings for enforcement" (emphasis added). Section 307(b) was designed to permit prompt judicial review and assure uniform results throughout the Nation. If the court should invalidate any emission standard, the Administrator would be able to revise the regulations in

[5] Although the court of appeals did not pass upon the validity of the emission standard, it observed (Pet. App. A9 n. 2) that it saw "* * * nothing inconsistent with the purposes of this statute in the Administrator's promulgation of a 'work practice' as a condition of an emission standard which, absent fulfillment of the work practice conditions, otherwise prohibits any emission of particulate asbestos material into the ambient air."

time to achieve the congressional goal of clean air; if the court should uphold the standard, or if (as here) no timely petition for review were filed, the emission standard would be treated as if it were part of the statute itself, and the process of compliance could begin free from unequal regulation or lingering doubts about the need to comply.

We believe that Section 307(b) therefore should be construed in accord with its literal terms. It is a statute allocating judicial review to one particular court and limiting the time within which to seek review. The Court is familiar with such statutes, and it has applied them with full force. See, *e. g., Connor* v. *Waller,* 421 U.S. 656; *Yakus* v. *United States,* 321 U.S. 414.

The model for Section 307(b) was the Emergency Price Control Act upheld in *Yakus.* The Price Control Act gave the Emergency Court of Appeals "exclusive" jurisdiction of all non-constitutional challenges to price control regulations, just as the District of Columbia Circuit has exclusive jurisdiction of challenges to emission standards. The Court concluded (321 U.S. at 430–431) that the exclusivity provision barred any person from challenging the validity of a price control regulation as a defense in a criminal case, even though the statute had not, in terms, stated that challenge would be barred in criminal cases. The Court then upheld the statute, as so construed, against constitutional arguments.

This case presents no constitutional question. Petitioner does not contend that Section 307(b) is

unconstitutional, that it was unable to challenge the emission standard in the District of Columbia Circuit, or that the opportunity to present such a challenge is ineffective. The case therefore turns solely on the proper construction of Section 307(b), which is much more explicit than the statute considered in *Yakus.* The Court held in *Yakus* that a simple exclusivity provision foreclosed challenge to a regulation in a criminal case. In Section 307(b) Congress went beyond giving exclusive jurisdiction to the District of Columbia Circuit; it explicitly precluded subsequent challenges in any criminal proceeding. "[T]he statute expressly covers the situation" presented by this case, and the Court should "read it as it is written" (*Swain* v. *Pressley,* No. 75–811, decided March 22, 1977, slip op. 5, 6).

II

Because the court of appeals held that the regulation was not subject to challenge, it did not consider petitioner's contention that the emission standard is invalid. If the Court should disagree with our arguments concerning Section 307(b), however, then it should remand the case to the court of appeals to allow that court to consider petitioner's remaining arguments in the first instance.

If the Court reaches the validity of the asbestos emission standard, then it should uphold the Administrator's decision. Congress contemplated that airborne asbestos, an extremely hazardous pollutant, would be subject to rigid control. When it proved impractical to achieve reduction of emissions by setting numerical

maximum emission rules, the Administrator decided to issue regulations requiring demolition contractors to conduct their operations under conditions that are likely to hold emissions to a minimum. The alternative to this approach would have been to adopt a rule of "no visible emissions," which would have brought demolition work to a halt. Petitioner is not entitled to complain that the Administrator instead selected an effective method of control that is simple, relatively inexpensive, and does not require the demolition industry to go out of business.

ARGUMENT

I

THE DISTRICT COURT MAY NOT CONSIDER THE VALIDITY OF A REGULATION THAT WAS NOT REVIEWED BY THE PRESCRIBED PROCEDURE IN THE COURT OF APPEALS

A. CONGRESS REQUIRED EXPEDITIOUS RESOLUTION OF CHALLENGES IN A SINGLE FORUM

This case involves two important provisions of the Clean Air Amendments of 1970. The first is Section 112, 42 U.S.C. 1857c–7, which requires the Administrator of the Environmental Protection Agency to issue regulations of nationwide applicability controlling the emission of especially hazardous air pollutants. The second is Section 307(b), 42 U.S.C. 1857h–5(b), which determines the time and court for judicial review of the Administrator's actions.

The general plan of the Clean Air Amendments has been discussed by this Court in *Train* v. *Natural Resources Defense Council, Inc.*, 421 U.S. 60, and *Union Electric Co.* v. *Environmental Protection Agency*, 427 U.S. 246. Congress required the Administrator to promulgate national "primary" and "secondary" air quality standards that were to be reviewed in the District of Columbia Circuit. Each State then was required to submit an implementation plan designed to achieve the primary air quality standards as expeditiously as possible, but ordinarily not later than three years after the date of approval of the implementation plan. Judicial review of the "local" issues raised by the implementation plans was placed in the courts of appeals having jurisdiction in the States involved in each plan. Variances from the plan are to be held to a minimum (*Train, supra*); and assertions that achievement of the plans' goals would be technologically infeasible are not a basis for attacking an implementation plan (*Union Electric Co., supra*).

Section 112 supplements this program by requiring the Administrator to restrict the emission of especially hazardous air pollutants from stationary sources. Section 112(a)(1) requires the Administrator to issue national emission standards with respect to any air pollutant that "may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness." Congress instructed the Administrator to publish a list of hazardous air pollutants within 90 days from the effective date of the Act. Proposed regulations were to be published 180 days thereafter, and Section 112(b)(1)(B)

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required the Administrator to prescribe final emission standards not later than 180 days after initial publication. Private compliance was to take place immediately in the case of new sources and within 90 days for existing sources.[6]

Congress anticipated that asbestos would be one of the air pollutants controlled under Section 112.[7] The Administrator agreed that control of asbestos was appropriate. On March 29, 1971, the Administrator published an initial list of three hazardous air pollutants—asbestos, beryllium, and mercury (see 36 Fed. Reg. 5931). On December 7, 1971, the Administrator published proposed standards for asbestos (36 Fed. Reg. 23239). After extensive hearings and revisions in the regulations, the Administrator published the final regulations on April 6, 1973 (38 Fed. Reg. 8820).

This final promulgation of the regulations brought into play Section 307(b), the special judicial review provision of the Clean Air Amendments. Because the asbestos emission regulations applied nationwide, Section 307(b) directed that any judicial review be had in the District of Columbia Circuit.

Congress sought to ensure expeditious judicial review no less than expeditious administrative action and expeditious private compliance.[8] See S. Rep. No.

[6] Section 112(c) permits waivers and Presidential exemptions from this timetable under certain circumstances not relevant here.

[7] See, *e.g.*, S. Rep. No. 91–1196, 91st Cong., 2d Sess. 20 (1970).

[8] The Senate committee stressed (*ibid.*) that "the violation of a prohibition or emission standard for any substance which is hazardous to the health of persons requires an expeditious enforcement procedure."

91–1196, 91st Cong., 2d Sess. 41 (1970). Section 307(b)(1) therefore required any challenges to be filed within 30 days. And, in order to guarantee that the expeditious and uniform results produced by judicial review under Section 307(b)(1) would not be disturbed by subsequent attacks in other forums, Section 307(b)(2) provides that: "Action of the Administrator with respect to which review *could have been* obtained under paragraph (1) shall not be subject to judicial review in civil *or criminal* proceedings for enforcement" (emphasis added).

Section 307 originated in the Senate. The Senate committee explained that "[b]ecause many * * * administrative actions are national in scope and require even and consistent national application, * * * any review of such actions shall be in the United States Court of Appeals for the District of Columbia."[9] The committee considered a total preclusion of judicial review, but it instead decided to restrict all review to the single selected forum; the committee stated that "the bill would specifically provide for [any] review within controlled time periods" and that any later challenge could be raised only if "it is alleged that significant new information has become available."[10] That "new information" exception applies, however, only to information that, if known at the time of promulgation, would have made it an abuse of discretion for the Administrator to have acted as he did; in any other event, Section 307(b)(2) forecloses review

[9] S. Rep. No. 91–1196, *supra*, at 41.

[10] *Id.* at 41, 42.

altogether. See *Union Electric Co., supra*, 427 U.S. at 253, 256.

Petitioner has not attempted to bring itself within the "new information" exception to Section 307(b). Indeed, since petitioner is challenging the regulation on its face, no claim of "new information" would be tenable.[11] Petitioner has not contended that it was unable to obtain review of the asbestos regulation within 30 days in the District of Columbia Circuit; petitioner never filed a petition for review, and has offered no explanation for its failure to do so. Petitioner has not contended that the judicial review procedures specified by Section 307(b)(1) are inadequate or ineffective. Petitioner was in business as a demolition contractor in 1973, and it has not contended that it lacked notice of the fact that judicial review was available. The asbestos emission standards had been presaged by Congress in 1970 and had been proposed

[11] The Administrator has promulgated amendments to the asbestos emission standards. 40 Fed. Reg. 48292 (1975); 39 Fed. Reg. 15396 (1974). (See also 42 Fed. Reg. 12122, 12127 (1977), which do not involve building demolition.) These amendments have been challenged by a timely petition for review in the District of Columbia Circuit. *National Association of Demolition Contractors, Inc.* v. *Costle*, C.A.D.C., Nos. 74–1545 and 75–2078. Although the Association has argued that the emission standard for asbestos is unauthorized by Section 112, the Administrator has responded that this line of challenge is foreclosed by the failure to present new grounds that were unavailable in 1973. However that may be, *National Association of Demolition Contractors* could not affect the present case even if the District of Columbia Circuit were to hold that the asbestos emission standards are not authorized by Section 112; the original standards still would have been in effect in 1974, when petitioner demolished the building in question, and Section 307(b) would bar petitioner from raising the subsequent invalidation as a defense. See pages 16–26, *infra*.

in 1971; no one should have been surprised when they were promulgated in 1973. Petitioner does not contend that the limitation on judicial review in Section 307(b)(2) is unconstitutional.

In short, petitioner does not contend in any way that the judicial review procedures established by Congress are inadequate, ineffective, or unconstitutional. Petitioner simply argues that despite the plain language of Section 307(b)(2), it may collaterally attack the asbestos emission regulations in a criminal enforcement proceeding.

B. CHALLENGES THAT COULD HAVE BEEN RAISED IMMEDIATELY AFTER PROMULGATION OF EMISSION CONTROL REGULATIONS MAY NOT BE URGED IN DEFENSE OF CRIMINAL ENFORCEMENT PROCEEDINGS

Congress meant what it so plainly said in Section 307(b)(2). Without exception, the courts of appeals have concluded that challenges that could have been raised immediately after the promulgation of a regulation may not be raised belatedly.[12] All of these courts recognize that Section 307(b) requires prompt review in a single designated court. If that court should determine that the Administrator erred, he could correct

[12] *Lloyd A. Fry Roofing Co.* v. *United States Environmental Protection Agency*, C.A. 8, No. 76–1731, decided May 11, 1977; *Friends of the Earth* v. *Carey*, 552 F. 2d 25, 34–35 (C.A. 2), petition for a writ of certiorari pending, No. 76–1737; *Lubrizol Corp.* v. *Train*, 547 F. 2d 310 (C.A. 6); *City of Highland Park* v. *Train*, 519 F. 2d 681 (C.A. 7), certiorari denied, 424 U.S. 927; *Oljato Chapter of the Navajo Tribe* v. *Train*, 515 F. 2d 654, 661 (C.A.D.C.); *Natural Resources Defense Council, Inc.* v. *Environmental Protection Agency*, 512 F. 2d 1351 (C.A.D.C.); *Granite City Steel Co.* v. *Environmental Protection Agency*, 501 F. 2d 925 (C.A. 7); *Plan for Arcadia, Inc.* v. *Anita Associates*, 501 F. 2d 390, 392 (C.A. 9), certiorari denied, 419 U.S. 1034; *Anaconda Co.* v.

his mistake quickly and preserve the timetable for the achievement of clean air; if the designated court upheld the regulations, or if they were not challenged, they could be enforced, and obedience would take place free of any cloud upon the regulations' validity.

Section 307(b) allocates judicial review to one particular court and limits the time within which to seek review. This Court is familiar with such statutes, and it has routinely applied them with their full force. The Voting Rights Act of 1965 provides, for example, that before a new voting practice or procedure may take effect in a governmental unit covered by the Act, it must be found non-discriminatory in both purpose and effect in a declaratory judgment action brought in a three-judge district court in the District of Columbia (or, in the alternative, be cleared through submission to the Attorney General). The Court has upheld and enforced this provision on numerous occasions. See, *e.g.*, *United States* v. *Board of Supervisors*, No. 76–489, decided February 22, 1977; *Connor* v. *Waller*, 421 U.S. 656; *Perkins* v. *Matthews*, 400 U.S. 379, 383–385. Decisions of the Attorney General not to object to a new voting plan are not judicially reviewable (*Morris* v. *Gressette*, No. 75–1583, decided June 20, 1977), and decisions concerning the coverage of the Act are absolutely unreviewable (*Briscoe* v. *Bell*, No. 76–60, decided June 20, 1977).

Ruckelshaus, 482 F. 2d 1301, 1304–1305 (C.A. 10); *Getty Oil Co.* (*Eastern Operations*) v. *Ruckelshaus*, 467 F. 2d 349, 359 (C.A. 3), certiorari denied, 409 U.S. 1125. All of these have been civil cases. The instant case is the first involving a criminal enforcement action. The same question is pending, however, in *United States* v. *Big Chief, Inc.*, C.A. 5, No. 76–3419, which has been argued and is awaiting disposition.

Courts applying the parallel judicial review provision of the Federal Water Pollution Control Act also have held that review must be had promptly, in the court of appeals, or not at all. See *Sun Enterprises, Ltd.* v. *Train*, 532 F. 2d 280, 287 (C.A. 2); *E. I. duPont de Nemours and Co.* v. *Train*, 528 F. 2d 1136, 1137 and n. 1, 1142 (C.A. 4), affirmed on other grounds, No. 75–978, February 23, 1977; *Peabody Coal Co.* v. *Train*, 518 F. 2d 940 (C.A. 6).

In *Califano* v. *Sanders*, No. 75–1443, decided February 23, 1977, the Court dealt with a statute providing that judicial review of Social Security decisions could be had only immediately after the final decision by the administrative officials. A claimant sought judicial review after a reopening of his case had been denied, and the Court held that review was barred by the statute. It explained (slip op. 9) that an "interpretation that would allow a claimant judicial review simply by filing—and being denied—a petition to reopen his claim would frustrate the congressional purpose, * * *, to impose a 60-day limitation upon judicial review * * *. Congress' determination so to limit judicial review to the original decision denying benefits is a policy choice obviously designed to forestall repetitive or belated litigation * * *. Our duty, of course, is to respect that choice."

Similarly, *Swain* v. *Pressley*, No. 75–811, decided March 22, 1977, dealt with a statute allocating to the District of Columbia courts the resolution of collateral attacks upon District of Columbia criminal convictions. The court of appeals had held that a defendant should have at least one opportunity for review in an

Article III court, but this Court disagreed. It found (slip op. 5) that "the statute expressly covers the situation" and held (*id.* at 6) that the courts must "read it as it is written."

Section 307(b)(2) implements a design Congress has used before. The model for Section 307(b) is the Emergency Price Control Act upheld in *Yakus* v. *United States,* 321 U.S. 414.[13]

The price control legislation addressed in *Yakus,* like the Clean Air Amendments, required rapid and unquestioning compliance. Review of price control regulations was centralized in the Emergency Court of Appeals under a statute giving that court "exclusive" jurisdiction of all non-constitutional challenges to price control regulations. The Court had no difficulty construing the statute as precluding any attack on a regulation in a criminal case (321 U.S. at 430–431), even though the statute did not explicitly mention criminal cases.

The difficult question presented in *Yakus* was one of constitutionality; petitioners there contended that the opportunity to obtain judicial review of administrative decisions in the Emergency Court of Appeals was inadequate, and that in any event Congress could not cut off defenses in a criminal case. These questions are not presented by the present case; petitioner does not argue that it lacked an adequate opportunity in 1973 to obtain review of the asbestos emission regulations, and it does not contend that Congress lacks the constitutional power to require courts to enforce regulations that have escaped earlier judicial review.

[13] Numerous other statutes contain similar restrictions on judicial review. See, *e.g.*, the Securities Exchange Act of 1934, 48 Stat. 901, as amended, 15 U.S.C. 78y; the Federal Trade Commission Act, 38 Stat. 717, as amended, 15 U.S.C. 45(c); the Federal Power Act, 49 Stat. 860, as added and amended, 16 U.S.C. 825*l*; the Federal Aviation Act of 1958, 72 Stat. 795, 49 U.S.C. 1486(a); the Occupational Safety and Health Act, 84 Stat. 1602, 29 U.S.C. 660. See *Brennan* v. *Winters Battery Manufacturing Co.*, 531 F. 2d 317 (C.A. 6). certiorari denied *sub nom. Winters Battery Manufacturing Co.* v. *Usery*, 425 U.S. 991.

The Court's decision in *Yakus* demonstrates, however, that Section 307(b) is not open to serious constitutional question. The Court concluded (321 U.S. at 443) that Congress possesses ample power to "foreclose any further or other consideration of the validity of a regulation as a defense to a prosecution for its violation" once a defendant has had an adequate opportunity to obtain review in a designated court with exclusive jurisdiction. Indeed, this Court pointed out that such bifurcated review is often advantageous to subjects of the regulation, since (*id.* at 444) "[u]nlike most penal statutes and regulations whose validity can be determined only by running the risk of violation, * * *, the present statute provide a mode of testing the validity of a regulation by an independent administrative proceeding. There is no constitutional requirement that that test be made in one tribunal rather than in another, so long as there is an opportunity to be heard * * *."

The statute at issue in *Yakus* was extraordinarily unyielding. Once a regulation had been promulgated,

review was required to be sought immediately; no statutory challenge to the regulation could be made thereafter for any reason. This could have produced harsh results where, as in *Yakus,* the regulation was attacked as applied to a particular set of facts, rather than on its face. The Clean Air Amendments, by contrast, give persons subject to the regulations much greater notice and opportunity to seek review.

First, the proposed regulations are published and become widely known through public hearings before they are finally issued. The delay between publication and promulgation gives interested parties ample time to study the proposals, to decide whether they would be aggrieved, and to prepare petitions for judicial review. They have 30 days after promulgation of the regulations within which to file petitions for review.[14]

Even if no petition for review is filed within 30 days, interested persons may obtain review if they can demonstrate new grounds arising after the 30th day; this provision ensures that changed circumstances will be taken into account and that no person will be denied judicial review of a regulation that has affected him in an unforeseeable way.

The concerns that led Congress to enact Section 307(b) are not unlike those that have led this Court to prohibit, in contempt proceedings, challenges to the validity of the underlying injunction. There is a time

[14] The petition need not be complex. It would be sufficient to set out in a single paragraph the general reasons for challenging a regulation.

to litigate and a time to comply. Once an air quality regulation, like an injunction, has gone unchallenged, the time for further protest has passed. "[E]ven though the constitutionality of the Act under which the injunction issued is challenged, disobedience * * * subjects the violator to contempt even though his constitutional claim might be later upheld." *Pasadena City Board of Education* v. *Spangler,* 427 U.S. 424, 439. See also *United States* v. *United Mine Workers,* 330 U.S. 258; *Walker* v. *City of Birmingham,* 388 U.S. 307. Congress did not attempt in Section 307(b) to preclude constitutional challenges or attacks upon the validity of the Clean Air Amendments. But it did provide that once 30 days have run, or once the regulations have been upheld on timely challenge, the time for dispute has passed. The district court must thereafter treat the regulations as if they were embodied in the statute itself.

Moreover, it is a familiar principle that when exhaustion of administrative remedies is required by statute, a defendant who neglects to exhaust may be precluded from challenging the validity of the administrative order in a criminal case. See *McGee* v. *United States,* 402 U.S. 479; *McKart* v. *United States,* 395 U.S. 185; *Falbo* v. *United States,* 320 U.S. 549. *McGee* held that if allowing all similarly situated persons to raise defenses for the first time in criminal proceedings would undermine the administrative apparatus, then the failure to exhaust administrative remedies would conclusively bar an attack on the ad-

ministrative order, even though no statute explicitly required such preclusion.[15]

It does not take much imagination to see that allowing all persons situated similarly to petitioner to attack the Administrator's regulations at this late date would undermine the adminisrative program. It would lead to disparate results in different courts, frustrating the intent of Congress to have a uniform national rule. It would delay the process of cleaning up the air by casting doubt upon the validity of outstanding regulations.

Petitioner does not discuss any of these principles. It relies instead on *Leedom* v. *Kyne,* 358 U. S. 184,

[15] See *Moore* v. *City of East Cleveland*, No. 75–6289, decided May 31, 1977, plurality slip op. 3 n. 5: Cases foreclosing nonconstitutional defenses in criminal prosecutions "did so pursuant to statutes that implicitly or explicitly mandated such a holding. * * * Because of the statutes the defendants were on notice that failure to pursue available administrative relief might result in forfeiture of a defense in an enforcement proceeding." Section 307(b)(2) put petitioner on notice that failure to seek prompt judicial review of the asbestos regulations would result in "forfeiture of a defense" in any later enforcement proceeding. See also Slip op. 9 (Burger, C.J., dissenting): "The applicability of the exhaustion principle to bar challenges to the legality of prosecutions is established, even where * * * substantial felony penalties are at stake."

See also *Whitney National Bank* v. *Bank of New Orleans*, 379 U.S. 411, 420–422, holding that when Congress has provided for review of administrative orders in the courts of appeals, that is the exclusive judicial remedy even in the absence of an express exclusivity provision. Any other rule would breed duplication, delay, and the application of conflicting standards. Cf. *Investment Company Institute* v. *Board of Governors*, 551 F. 2d 1270, 1278–1282 (C.A.D.C.).

for the proposition that administrative orders always are open to judicial review. *Leedom* does not support this proposition. *Leedom* considered the problem of judicial review under the National Labor Relations Act; the Court interpreted the ambiguous requirement of a "final" order as a precondition to judicial review (see 29 U.S.C. 160(f)) liberally in order to avoid the prospect that a concededly invalid administrative order would escape *any* opportunity for judicial review (358 U.S. at 190–191). *Leedom* does not stand for a broad principle of reviewability at all times and in all courts.[16] The Clean Air Amendments do not leave petitioner without a forum in which to obtain judicial review of the asbestos regulations; petitioner neglected the adequate opportunity for review under Section 307(b)(1). Petitioner's difficulties stem not from congressional oversight but from its own neglect. *Leedom* has nothing to do with the question whether a party that has failed to utilize an available and exclusive judicial remedy may subsequently raise its arguments as a defense in a criminal prosecution.

Petitioner also maintains that this case may be distinguished from *Yakus* because *Yakus* dealt with an attack upon a regulation as applied, whereas peti-

[16] See *Briscoe* v. *Bell*, *supra*, slip op. 9 n.13. This Court has explained on several occasions that *Leedom* turned upon the particular statute and facts presented by that case. See, *e.g.*, *Boire* v. *Greyhound Corp.*, 376 U.S. 473, 480–482; *Brotherhood of Railway and Steamship Clerks* v. *Association for the Benefit of Noncontract Employees*, 380 U.S. 650, 659–660.

tioner has attacked the regulation on its face. The distinction is insubstantial. Although the Court did not have occasion to deal in *Yakus* with a facial attack, other cases relied on *Yakus* to foreclose facial attacks. See *Bowles* v. *Willingham,* 321 U.S. 503, 521; *Case* v. *Bowles* 327 U.S. 92, 98; *Woods* v. *Hills,* 334 U.S. 210, 213–214.

If any distinction can be drawn between challenges to a regulation on its face and to a regulation as applied—and neither Section 307(b) nor its legislative history draws such a distinction—then preclusion of review is more, not less, appropriate when a regulation is attacked on its face. After all, facial defects are knowable the moment a regulation is promulgated. The consequences of a regulation as applied may be unknowable for some time, however; in *Yakus* itself the regulation was challenged only because it had the effect of requiring particular sellers to operate at a loss. If, as *Yakus* held, Congress may foreclose arguments that might have been difficult to anticipate and raise immediately, and that pertain to individual subjects of regulation, then surely Congress may foreclose arguments that appear at once on the face of the regulation and pertain equally to every subject of that regulation.[17]

[17] Petitioner contends (Br. 12) that *Yakus* refrained from holding that Congress could foreclose challenges to the facial validity of a regulation. The statement to which petitioner apparently refers (321 U.S. at 446–447) is: "We have no occasion to decide whether one charged with criminal violation of a duly promulgated price control regulation may defend on the ground that the regulation is *unconstitutional* on its face" (emphasis added). Petitioner does not contend that the asbestos emission standard is unconstitutional on its face; moreover, the reservation of that point in *Yakus* was attributable to the statute under consideration, which created concurrent jurisdiction to consider constitutional questions in the Emergency Court of Appeals and the enforcement courts (see 321 U.S. at 430–431). Nothing in the Clean Air Amendments or their legislative history indicates that Congress contemplated concurrent jurisdiction on any question, statutory or constitutional. Review of constitutional questions may be had under Section 307(b)(1) and consequently, under the terms of Section 307(b)(2), may not be had in enforcement actions. See *Lloyd A. Fry Roofing Co., supra; Friends of the Earth, supra.*

Another passage in *Yakus* states that the Court does not consider "whether one who is forced to trial and convicted of a violation of a regulation, while diligently seeking determination of its validity by the statutory procedure, may thus be deprived of the defense that the regulation is invalid" (321 U.S. at 447). This passage refers to the possibility that a subject of regulation might seek timely judicial review in the proper and exclusive forum, then be put to trial before the court has passed upon the properly presented challenge. Petitioner, however, did not seek timely review of the asbestos regulation, and this case does not present whatever problems there may be in bringing a criminal prosecution before the District of Columbia Circuit has resolved a timely challenge to a nationwide emissions standard.

We submit that Section 307(b)(2) should be construed in accord with its literal terms. The statute preserves a full opportunity for judicial review at the proper time and in the proper court. Judicial review under Section 307(b)(1) enables persons affected by the regulations to know promptly whether the regulations are valid, and it enables the courts to detect any errors promptly so that attainment of the congressional goal of clean air will not needlessly be delayed. Section 307(b), by requiring parties to raise challenges promptly or not at all, imparts to the regulations a

necessary measure of authority so that competitive adjustments can be made and the need for adversarial enforcement can be held to a minimum. All affected parties will be subject to the same competitive conditions.[18] The judicial review provisions are a product of careful congressional design, and they preclude petitioner from raising in this case the defense that the asbestos emission standards are invalid.

II

SECTION 112 AUTHORIZES THE ADMINISTRATOR TO CONTROL EMISSIONS BY ISSUING LIMITATIONS UPON PERMISSIBLE WORK PRACTICES INSTEAD OF, OR IN ADDITION TO, NUMERICAL LIMITATIONS UPON EMISSIONS

We have argued above that petitioner is not entitled to defend this criminal proceeding by arguing that the asbestos emission regulations are invalid. If the Court agrees with this argument, it should affirm the judgment of the court of appeals. If the Court should conclude, however, that Section 307(b)(2) does not bar review in this case of the asbestos regulations, then it should vacate the judgment of the court of

[18] Enterprises have an important interest in the assurance that none of their competitors will be subject to less costly regulations. This interest also leads them to take a hand in enforcing the regulations. In *United States* v. *Big Chief, Inc.*, 7 E.R.C. 1840(E.D. La.), appeal pending, C.A. 5, No 76-3419, one of the prosecution's important witnesses was an unsuccessful bidder for a demolition contract. In preparing his bid, he had considered the costs of complying with the asbestos emission standard, and he suspected that the prevailing bidder had not. He visited the demolition site to observe whether the prevailing contractor was complying with the regulation and discovered the lack of compliance.

appeals and remand for further consideration of petitioner's argument (Br. 14–19) that the asbestos regulations are not authorized by the statute. The court of appeals did not rule on this argument in light of its conclusion that Section 307(b)(2) precludes review of the regulations in this proceeding, and we submit that this Court should not consider their validity in advance of a decision by the court of appeals. Out of an abundance of caution, however, we present a brief survey of the arguments supporting the validity of the asbestos regulations.

We have discussed the structure and purpose of Section 112 at pages 11–12, *supra*. That Section requires the Administrator to prescribe regulations that provide an "ample margin of safety" to protect the public health from harm caused by the emissions of especially hazardous air pollutants. Airborne asbestos causes cancer and there is no known level of safe exposure (38 Fed. Reg. 8820).

Congress contemplated that the Administrator would regulate asbestos pursuant to Section 112.[19] But the Administrator faced formidable obstacles to effective regulation. Devices capable of measuring the concentration of asbestos in the air have been developed only recently, so that there is no way to know whether the amount present in the air has increased or decreased in recent years (38 Fed. Reg. 8820). More importantly, there is no known way to measure

[19] See note 7, *supra*. See also 116 Cong. Rec. 42381–42384 (1970) (statement of Senator Muskie, the bill's floor manager).

the amount of asbestos emitted from stationary sources (*ibid.*), and when buildings are being demolished there is no known way to capture or filter the asbestos that may be liberated from the insulation.

Numerical limitations on asbestos emissions from the demolition of buildings therefore would have been meaningless and unenforceable. Still, the Administrator was under an explicit congressional mandate to restrict the emission of asbestos. The Administrator therefore initially proposed to prohibit any activity that resulted in "visible" liberation of asbestos into the air (36 Fed. Reg. 23239, 23242). This approach was strongly criticized, however, because it would have forbidden "repair or demolition in many situations, since it would be impracticable, if not impossible, to do such work without creating visible emissions" (38 Fed. Reg. 8821). The Administrator therefore concluded that the best approach for demolition activities was to prohibit all emissions that were not held to a minimum by the use of "work practices" calculated to reduce emissions. The regulations required demolition contractors to wet and remove friable asbestos before demolishing the building, and to keep the building debris (which may contain additional asbestos) wet during demolition. The procedure is simple, effective, and relatively inexpensive.

The Administrator's actions are consistent with Section 112. That Section requires the Administrator to promulgate "emission standards," and it does not

specify whether the standards shall set numerical limitations or state work practices.[20]

Petitioner argues that "emission standards" may include only numerical limitations, because Section 112(b)(2) provides that the Administrator shall "issue information on pollution control techniques for air pollutants subject to the provisions of this section." This shows, petitioner argues, that Congress intended to draw a distinction between numerical limi-

[20] The interpretation of Section 112 that we urge here has been upheld by the district court in *United States* v. *Big Chief, Inc.*, *supra*. While erroneously reaching the merits in our view (see point I, *supra*), that court concluded (7 E.R.C. at 1842–1843) that "[t]here appears to be no justification for restrictively defining 'emission standard' so as to exclude standards such as this, which undeniably control the amount of ambient emissions. It is most significant that Congress elected not to limit the term to numerical standards." The district court rejected arguments based on an analogy to Sections 111, 202, and 211 of the amended Act, reasoning that each of those sections requires the Administrator to consider economic and technological difficulties in achieving reduction of pollution; Congress did not require the Administrator to consider cost or technological problems in setting standards under Section 112 for the reduction of the most hazardous pollutants.

One district court has suggested that Section 112 does not authorize the asbestos emission regulations. See *United States* v. *National Wrecking Co.*, N.D. Ill., No. 74 CR 755, decided December 20, 1974; *United States* v. *Nardi Wrecking Co.*, N.D. Ill., No. 74 CR 756, decided January 2, 1975; *United States* v. *Harvey Wrecking Co.*, N.D. Ill., No. 74 CR 758, decided January 7, 1975; *United States* v. *Brandenburg Demolition, Inc.*, N.D. Ill., No. 74 CR 757, decided January 31, 1975. In each case, however, the indictment was dismissed for failure to allege that asbestos was emitted as a result of the demolition, and the district court's brief remarks about Section 112 were *dicta*.

tations (which could be the subject of "emission standards") and "pollution control techniques" (which could not). The argument is excessively formalistic. The asbestos control regulations devised by the Administrator prohibit demolition altogether—which achieves zero emissions—unless the prescribed emission control practice is adopted. Congress was concerned not with the form of the regulation but with its results. Section 112 required the Administrator to do what was necessary to achieve a level of emissions "which in his judgment provides an ample margin of safety to protect the public health." The asbestos emission regulations do so in an entirely practical way.

The legislative history of Section 112 demonstrates that Congress authorized whatever manner of controls on hazardous air pollutants should prove necessary to protect the public health. The bill passed by the House directed the Administrator to promulgate regulations establishing "standards with respect to emissions" which were to provide that no new sources of hazardous air pollutants "shall be constructed or operated, except where (and subject to such conditions as he deems necessary and appropriate) the [Administrator] makes a specific exemption." H.R. 17255, 91st Cong., 2d Sess., Section 5 (1970).

The Senate amended the House bill, subjecting new stationary sources and hazardous air pollutants to

different programs of control.[21] It required the Administrator to publish a list of hazardous air pollutants, to propose a prohibition on emissions of such pollutants, and, after a public hearing, to promulgate the prohibition unless the hearing showed that less drastic measures would suffice. The Senate committee report emphasized that "there should be no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare." S. Rep. No. 91–1196, *supra,* at 20.

The Conference Committee adopted the broad outlines of the Senate proposal, and the report of the conferees warned that polluters that were not able to comply with standards that would produce "an ample margin of safety to assure public health protection" would be subject to abatement actions. See H.R. Conf. Rep. No. 91–1783, 91st Cong., 2d Sess. 46 (1970).

None of the committee reports, and none of the floor debates, indicates that numerical emission limits are the only way that the Adminstrator could achieve the important objective of limiting the emission of especially hazardous pollutants. There would be no reason consistent with the statutory scheme for creating or implying such a restriction, especially when the only effective alternative to a work practice rule would be an absolute prohibition on the offending activity.

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[21] It is not necessary to discuss here the legislative history of the new stationary source rules, which were accepted by the House and became Section 111 of the amended Act.

To the extent there is any doubt about the meaning of the Amendments, this Court should defer to the consistent construction of them by the Administrator, who is charged with their superintendence. The Court has "accorded great deference to the Administrator's construction of the Clean Air Act." *Union Electric Co.* v. *Environmental Protection Agency, supra,* 427 U.S. at 256; see also *Train* v. *Natural Resources Defense Council, Inc., supra,* 421 U.S. at 75, 87. The Administrator's construction of Section 112 is consistent, reasonable, and necessary to fulfill the purpose of the Clean Air Amendments.[22]

[22] Petitioner apparently contends (Br. 16–17) that the Administrator's interpretation of Section 112 has not been consistent because, in 1974, Administrator Train asked the President to submit to Congress legislation that would explicitly authorize "work practice" rules of the sort involved here. It is not inconsistent, however, for an administrative agency to construe an ambiguous statute in a particular way while simultaneously seeking clarification from Congress. Cf. *United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 170–171. As Administrator Train pointed out in a letter of February 3, 1975, to the Chairman of the Senate Committee on Public Works, the Agency was simply "requesting Congressional affirmation of [its] authority to set design, equipment, or practice standards under those sections where the limitations of measurement technology make an emission limitation approach infeasible or impractical." (The text of this letter is set out in Appendix C, *infra.*)

Congress has been sensitive to the Administrator's request. The Senate has passed a bill (S. 252) that would confirm the Agency's authority to establish work practices when necessary to limit emissions. The committee report (S. Rep. No. 95–127, 95th Cong., 1st Sess. 44 (1977)) states that: "Asbestos is an example which has been demonstrated as requiring other than a direct numerical limitation. * * * Work practice and other design characteristics may be the only means available for controlling such pollutants. * * * [The provisions of this bill] would fully authorize the present EPA regulations governing asbestos." See also 123 Cong. Rec. S9175 (daily ed., June 8, 1977) (statement of Senator Muskie). The House bill does not contain a similar clarifying amendment, and the bills have been sent to a conference committee. If a bill incorporating the Senate provision should be passed, it would provide additional support for our position that the asbestos emission regulations were authorized by the 1970 Amendments. Cf. *Califano* v. *Sanders, supra,* slip op. 5–8 (holding that a 1976 statute demonstrated that the Administrative Procedure Act had not been designed as a grant of federal jurisdiction). We will promptly advise the Court if a clarifying amendment is enacted.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

DANIEL M. FRIEDMAN,
*Acting Solicitor General.**
JAMES W. MOORMAN,
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Attorney,
Environmental Protection Agency.

JUNE 1977.

* The Solicitor General is disqualified in this case.

APPENDIX A

United States Environmental Protection Agency

Order No: EPA 5–74–A–2

In the Matter of Adamo Wrecking Company, 11805 Gratiot Avenue, Detroit, Michigan

Order

The following ORDER is issued this date pursuant to Section 113(a)(3) of the Clean Air Act, as amended, 42 U.S.C. § 1857 C–8(a)(3).

On October 24, 1973, a United States Environmental Protection Agency inspector visited a demolition operation conducted by Adamo Wrecking Company at 1701–07 Seward in Detroit, Michigan. The building being demolished was a four story brick apartment building containing more than four (4) units. While there, demolition procedures were observed and a sample of dry insulating material covering some piping was obtained.

This sample was scientifically analyzed and was found to contain friable chrysotile asbestos. That sample was taken from a section of insulated four inch pipe (approximate size) in the basement and on the southeast corner of the structure. Also, demolition procedures observed at the site were found to be contrary to the procedures detailed in regulations published in the April 6, 1973, *Federal Register* (38 F.R. 8829), specifically § 61.22(d)(2)(i). Further, no notice of intention to demolish was provided to the

United States Environmental Protection Agency as required by § 61.22(d)(2)(i).

Therefore, after a thorough investigation of all relevant facts, including the seriousness of the aforementioned violation of the regulations promulgated by the Administrator pursuant to § 112 of the Clean Air Act, as amended, and any good faith efforts to comply with said regulations, it has been determined that immediate compliance in accordance with the provisions hereinafter set forth is reasonable.

Ordered:

That the Adamo Wrecking Company, 11805 Gratiot Avenue, Detroit, Michigan, with regard to the demolition operation conducted by the company at 1701–07 Seward in Detroit, Michigan (if such operation is still in progress), and with regard to all future demolition operations conducted by the company and subject to the standards published in the April 6, 1973, *Federal Register* at page 8829; shall adhere to all applicable standards enumerated in the aforementioned *Federal Register,* and especially § 61.22(d)(2)(i) and § 61.22(d)(1), with one exception, that § 61.22(d)(1) shall be modified to required notice of intention to demolish to the United States Environmental Protection Agency only five (5) days prior to commencement of such demolition.

Dated 12/18/73.

FRANCIS T. MAYO,
Regional Administrator.

APPENDIX B

ADAMO WRECKING CO.,
Demolition engineers: Licensed, Bonded, Insured;
11805 Gratiot Ave., Telephone 372–4033—Member of:
Detroit Demolition Contractors Assn., Inc.
Detroit, Michigan 48213, December 26, 1973.

Attn: Mr. FRANCIS T. MAYO,
United States Environmental Protection Agency,
Region V,
One North Wacker Drive,
Chicago, Illinois 60606

DEAR SIRS: This will acknowledge receipt of your letter of December 18, 1973. Please be advised that a visible examination of the structure located at 1701–07 Seward, Detroit, Michigan had been made prior to commencement of demolition, and no Friable asbestos material was observed.

Needless to say, my company did not knowingly violate any of your regulations or orders. We deeply regret that a alleged violation was found to occur at the above site. It is our intention to fully comply with your rules and regulations as we know them.

In keeping with the spirit and letter of your rules and regulations, I am enclosing herewith a list of buildings, which should be in the process of demolition within the next thirty (30) days, and contemplated completion within ninety (90) days from the date hereof. To the best of our knowledge, there are no friable asbestos materials within said buildings. These structures are to be machine wrecked in accordance with the ordinances of the City of Detroit.

I trust that the above meets with the intent of your letter of December 18, 1973. However, if any further information or cooperation is desired, please do not hesitate to contact us as our intention is to give full cooperation to your agency.

Very truly yours,

ADAMO WRECKING COMPANY
Mr. JOHN T. ADAMO.

Owner: City of Detroit, Department of Public Works, Ninth Floor, Cadillac Tower, Detroit, Mich. 48226.

Demolition of Buildings Revenue Sharing Program, Group 73–1 (RS). Contract No. PW–6263.

2909 Blaine	4 Story Brick—60 X 75 feet
2200–16 Brush	3 Story Masonry—90 X 100 feet
3207 Blaine	3½ Story Brick—70 X 100 feet
2612 Carter (8751 Linwood)	4½ Story Commercial Masonry—100 X 110 feet
8745 Dumbarton	4½ Story Brick—115 X 145 feet
2707–37 Gladstone	4 Story Masonry—80 X 170 feet
2670 Gladstone	3½ Story Masonry—90 X 125 feet
5415 Joy Road	5 Story Brick—80 X 100 feet
11842 LaSalle	3½ Story Brick—65 X 130 feet
7710–20 Lawton	2½ Story Masonry—70 X 90 feet
105–13 Smith	3 Story Masonry—60 X 110 feet

Owner: John T. Adamo & Paul Garavaglia, DBA/ Adamo Wrecking Company, 11805 Gratiot Avenue, Detroit, Michigan.

Dumbarton Park Apartments, 8550 Dumbarton, Detroit, Michigan. Project No. 044–44026.

APPENDIX C

LETTER FROM ENVIRONMENTAL PROTECTION AGENCY ADMINISTRATOR TO SENATE PUBLIC WORKS COMMITTEE CHAIRMAN SUPPORTING PROPOSED AMENDMENTS TO THE CLEAN AIR ACT DATED FEBRUARY 3, 1975

DEAR MR. CHAIRMAN: I would like to take this opportunity to express my support for the proposed amendments to the Clean Air Act submitted by the President on January 30, 1975, and briefly outline the Environmental Protection Agency's views on the need for their enactment. The environmental, energy and economic problems facing our society are interdependent and require complementary solutions and goals. I believe that the proposed amendments would reinforce our Nation's commitment to achieve and maintain air quality capable of protecting the health and welfare of our citizens while taking cognizance of the serious economic and energy-related problems which must be solved. The amendment addressing significant deterioration, however, is one of several possible approaches in dealing with this problem. Some of the proposed amendments are new, while others were submitted last year but failed to receive consideration.

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4. New Source and Hazardous Emission Equipment Standards

The Environmental Protection Agency has prescribed a number of emission standards as Section 111 new source performance standards and Section 112

hazardous emission standards, and in a few instances, prescribed design, equipment, or operational standards under these sections where emission limitations are not practical. An example of the latter approach is the standard prescribing procedures on building demolition for the purpose of controlling emissions of asbestos to the atmosphere. We are requesting Congressional affirmation of our authority to set design, equipment, or practice standards under those sections where the limitations of measurement technology make an emission limitation approach infeasible or impractical. This authority would be used only in exceptional situations and would be subject to public participation under existing law. The amendment also directs the Administrator to consider non-air quality environmental impacts and energy requirements in setting standards of performance.

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Sincerely yours,

/s/RUSSELL E. TRAIN,
Administrator.

Honorable JENNINGS RANDOLPH,
Chairman,
Committee on Public Works,
United States Senate,
Washington, D.C. 20510

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